Filed 7/21/09 In re C.A. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re C.A., et al., Persons Coming Under the Juvenile Court Law.	B210137
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. N.A., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK73196)

APPEAL from orders of the Superior Court of Los Angeles County, Sherri Sobel, Referee. Affirmed.

Mary E. Cochran, under appointment by the Court of Appeal, for Defendant Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Jacklyn K. Louie, Deputy County Counsel for Plaintiff and Respondent.

Mother, N.A., (hereafter Mother) seeks review of the juvenile court's jurisdictional and disposition orders removing her children, C.A. and E.W. from her care. She challenges the sufficiency of the evidence to support the orders. Mother also argues she should not have been ordered to complete a parenting course and individual counseling because there was insufficient evidence of injury or harm to the children. We conclude the orders are supported by substantial evidence.

FACTUAL AND PROCEDURAL SUMMARY

Mother and her sons (4 and 5 years old) came to the attention of the Department of Children and Family Services (the Department) on June 4, 2008.[1] A Los Angeles Police Department officer had taken a 13-year-old uncle of the children home because of a school situation. He found Mother's two children (and six others[2]) alone and unsupervised. Mother is the adult sister of the six other children. The home was filthy, smelly, and infested with cockroaches. The officer located an 18-year-old uncle of the children, who subsequently arrived at the scene. A social worker also went to the home. Filthy beds and bunk beds, with dirty blankets and no sheets, were placed in the single room. Unwashed dishes were piled high in the kitchen and the refrigerator and freezer were filthy inside and outside. The children were disheveled, with dirty clothes, hands, and faces. They emitted a foul odor. The police officers told the worker that the children appeared to be hungry. They were fed at the police station, and asked for several meals.

While the social worker was at the home, the children's maternal grandmother arrived. She told officers she had just been released after three days in jail. According to grandmother, she had made arrangements for someone to care for the children during the day while she was incarcerated, and that her two adult sons were to care for them in the evenings and overnight. Grandmother said she was trying to contact Mother by

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[1] The fathers of the children are nonoffending and do not appeal from the orders.

[2] A companion referral was made as to the other children found in the apartment. The social worker counted all the children and realized there were actually six children plus Mother's two children who had been detained.

telephone, but Mother was not answering. She said that Mother "lived somewhere in Los Angeles" and that the children often stayed with her. Grandmother said she did not understand why the children were being removed because previous investigations by the Department did not result in removal of the children. One of the maternal uncles (13 years old) told the police that no one supervised him, his siblings and nephews (the children in this proceeding) while maternal grandmother was in jail. According to him, Mother's children had been staying there for about two weeks.

Mother arrived at the police station after the children were in protective custody under Welfare and Institutions Code section 300, subdivision (g).[3] She refused to provide the social worker with an address, but did give a telephone number. She said the children should not have been removed, and denied leaving them with maternal grandmother for two weeks, saying it had only been overnight. She said she had been staying at motels provided by the Department of Public Social Services, but did not know the name or address of her current motel. Mother has juvenile and adult criminal history. The children were released to the Department and placed in out-of-home care. A petition pursuant to section 300, subdivisions (b) and (g) was filed, alleging that Mother had made an inappropriate plan for the children's care and supervision which placed them at risk of harm.

An addendum report was prepared by the Department for the June 4, 2008 detention hearing. The social worker had spoken with Mother and reported that Mother did not think there was anything wrong with leaving the children with maternal grandmother because it was better to leave the children with her mother rather than a complete stranger. Mother said she should not be held accountable for the condition of maternal grandmother's home. She said that the children were not left alone, but that she, the maternal uncles, and an unrelated adult male were with them.

At the detention hearing, Mother denied the allegations of the petition and the children were detained in shelter care. The court found that continued custody by Mother

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[3] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

would be contrary to their welfare. Their custody and control was placed under the supervision of the Department. The court directed the Department to investigate the situation, indicating that if the children were at maternal grandmother's for more than two days, the Department did not have discretion to release the children to Mother. If Mother's account that the children were at maternal grandmother's for only one night was verified, the Department was to investigate Mother's home, and was given discretion to return the children to her.

The adjudication and disposition hearing was held on August 4, 2008. Mother submitted on the Department's reports. The petition was sustained as amended, pursuant to section 300, subdivision (b). The children were declared dependents of the court and removed from parental custody. The court ordered them suitably placed. Reunification services were ordered for Mother, including individual counseling and parenting classes. She was to seek employment and appropriate housing. Mother filed a timely appeal from the jurisdictional and dispositional orders.[4]

DISCUSSION

I

Mother challenges the sufficiency of the evidence to warrant dependency jurisdiction over her sons. She contends that when they were detained, they had not suffered any harm, injury or illness; Mother concedes they may have had dirty hands and faces and may have been hungry. These circumstances, she asserts, do not demonstrate suffering or a substantial risk of suffering serious physical harm or illness.

"'When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the

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[4] While the jurisdictional order is interlocutory and not appealable, the jurisdictional findings are reviewable on appeal from the dispositional order. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393, fn. 8.)

trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court's determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]'" (*In re Savannah M., supra,* 131 Cal.App.4th at p. 1393, quoting *In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

"At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300. . . ." (§ 355, subd. (a).)

The basis for dependency jurisdiction was an amended allegation under section 300, subdivision (b) which provides that a child may be adjudged a dependent if "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness."

Mother points out that the problematic conditions that led to the detention of the children were at the maternal grandmother's house, not her own home. She argues there were no allegations that she uses drugs, does not take care of her children, and could not care for them in the motel where she lives. There had been no prior involvement of the Department with her sons. She contends: "There was no evidence that any of Mother's actions caused injury or harm to the children." According to Mother, her placement of the children for a short stay at the maternal grandmother's house is evidence of past events which may have probative value in considering current conditions only if

"circumstances existing *at the time of the hearing* make it likely the children will suffer the same type of 'serious physical harm or illness' in the future." (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388.)

Mother argues her housing was appropriate for the children at the time of the hearing. The Department inspected her motel room on June 27, 2008, and found it to be neat and clean, with food in the cupboards and refrigerator, a working bathroom, a queen-size bed, a dresser, desk, and television. No safety hazards were observed. She asserts that indigence alone is not sufficient to make her an unfit parent, citing *In re Cheryl E.* (1984) 161 Cal.App.3d 587, 607. Since the children were only visiting their maternal grandmother's home, where the unhealthy conditions existed, Mother argues the risk that formed the basis for the petition did not exist at the time of the jurisdictional hearing.

Respondent relies on the statement by A.L. (the 13-year-old uncle of the children) that the children had been staying in the maternal grandmother's apartment for about two weeks, where no one supervised him, his siblings, and his nephews while his mother was in jail. The child C.A., was too young at five years old to state how long he had been at maternal grandmother's house, but he said that he and his brother lived with his mother, then the maternal grandmother.

The Department argues that even Mother's version of events supports jurisdiction. Mother told the Department that she did not know maternal grandmother until she was nine years old when maternal grandmother was released from prison. Maternal grandmother beat Mother until she was black and blue, so Mother began to run away, resulting in her placement in the dependency system. She said her childhood family "had social workers all the time." Mother said that her brother A.L. hit maternal grandmother, who did nothing. She believed there was nothing wrong with leaving her children at maternal grandmother's home.

Despite the problems with maternal grandmother, Mother told the Department that she started letting her children stay with her for a day or two while she looked for work. She claimed to go by to make sure everything was okay. Maternal grandmother's house was always clean on these occasions. Mother said she dropped the children off at

maternal grandmother's on Wednesday, May 28, 2008, in the morning, and grandmother was there. Maternal grandmother said she was going to leave, but that W., a family friend, would be there with the children. Then she got a call that grandmother had been arrested. Mother said she "was going to pick [her children] up, but I knew W. was there and my mother wanted me to go to court to clear things up." Mother tried to arrange bail for grandmother, but could not. According to Mother, she picked up her children. But she said that on Thursday, May 29, the children were with W. while she went to court with her mother. Then she went back to Los Angeles. Thursday night she went back to get her children to take them to a movie "way late 9 or 10." Her brother was there and she left. She said she dropped the children off the next day at maternal grandmother's and went to look for work. When she returned, the children were hungry so she went to get them hamburgers. When she dropped the food off, W. was there, and Mother learned that maternal grandmother was going to be released from jail. She let the children spend the night.

As the Department argues, if Mother did check on the children while they were at maternal grandmother's during the period grandmother was in jail, Mother should have been aware of the filthy conditions in the home. In addition, the children themselves were filthy and emitted a foul odor when detained. Mother fails to acknowledge that she left her four- and five-year-old sons in squalid conditions without adequate supervision. Substantial evidence supports the risk of substantial harm to the children under these circumstances, and therefore supports the assertion of jurisdiction over the children.

II

Mother also contests the disposition order removing the children from her custody and turning over their custody to the Department for suitable placement. She again downplays the risk to the children of the circumstances we have described. She argues there was no evidence the children had suffered abuse or neglect, asserting that they only had dirty hands and faces and were hungry when detained. Mother contends there was not clear and convincing evidence supporting their removal. The role of Mother's boyfriend, who had an extensive criminal history, was a continuing concern to the

juvenile court. There was evidence that the boyfriend had paid for Mother's motel room. Mother argues that a no-contact order would have ensured that he had no contact with the children. She contends the children were removed simply because she was poor and was unable to afford housing.

"When a parent challenges a disposition order on the basis of insufficient evidence, we review the record in the light most favorable to the trial court to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings based on clear and convincing evidence. Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694-695; *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.)" (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 852.)

Mother's argument fails to acknowledge that, as the Department contends, "the heart of the case was the Mother's poor judgment that ultimately left the children without adult supervision in unhealthy, filthy conditions for some length of time, and in choosing to be wholly dependent on a man who had an extensive violent criminal history."

The record reflects substantial evidence from which the juvenile court could find by clear and convincing evidence that the children were at risk of physical harm if returned to Mother's custody at this point in the proceeding.

III

Mother also challenges her reunification plan, arguing that since there was no evidence the children were injured or harmed while staying at the home of maternal grandmother, there is no need for parenting classes and individual counseling.

A reunification "'plan must be specifically tailored to fit the circumstances of each family [citation], and must be designed to eliminate those conditions which led to the juvenile court's jurisdictional finding. [Citation.]' (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) The effort must be made to provide reasonable reunification services in spite of difficulties in doing so or the prospects of success. [Citations.] The adequacy of the reunification plan and of the department's efforts to provide suitable services is

judged according to the circumstances of the particular case. [Citations.] The Courts of Appeal have held: '[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult . . . .' [Citations.]" (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010-1011.)

Mother asserts: "There was no evidence presented that Mother needed parent education classes or individual counseling. It appears that poverty was Mother's main issue and the case plan did not address or attempt to assist Mother in what will help her to maintain appropriate housing." Once again, this argument fails to recognize that more was at issue here. As we have seen, the evidence establishes that Mother left the children with maternal grandmother who had both a criminal history and a history of abusing Mother. Mother failed to ensure that the conditions at the grandmother's house were safe for the children and that adequate supervision was provided. Under these circumstances, both parenting classes and individual counseling were appropriate aspects of a reunification plan.

DISPOSITION

The jurisdiction and disposition orders are affirmed.

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EPSTEIN, P.J.

We concur:

WILLHITE, J. MANELLA, J.